

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARTIN JONATHAN BATALLA : 16-CV-4756 (NGG)
VIDAL, :

Plaintiff, :

-against- :

KATHY A. BARAN, Director, :
California Service Center; :
KELVIN MEDLOCK, Associate :
Director, California Service :
Center; SUSAN M. CURDA, :
District Director; and :
DONALD W. NEUFELD, Associate :
Director, Service Center :
Operations, U.S. Citizenship :
and Immigration Services, :

Defendants. :

STATE OF NEW YORK, ET AL., : 17-CV-5228 (NGG)

Plaintiffs, :

-against- :

DONALD TRUMP, in his official :
capacity as President of the :
United States; U.S. : United States Courthouse
DEPARTMENT OF HOMELAND : Brooklyn, New York
SECURITY; ELAINE C. DUKE, in :
her official capacity; U.S. :
CITIZENSHIP AND IMMIGRATION :
SERVICES; U.S. IMMIGRATION :
AND CUSTOMS ENFORCEMENT; and :
the UNITED STATES OF :
AMERICA, :

Defendants. :

Thursday, August 20, 2020
2:00 p.m.

APPEARANCES

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1 TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
2 BEFORE THE HONORABLE NICHOLAS G. GARAUFI
3 UNITED STATES DISTRICT JUDGE

4 A P P E A R A N C E S:

5 For the Plaintiffs NATIONAL IMMIGRATION LAW CENTER
6 Martin Jonathan 3450 Wilshire Boulevard
7 Batalla Vidal, et Suite 108-62
8 al. Los Angeles, California 90010
9 BY: MAYRA B. JOACHIN, ESQ.
10 ARACELI MARTINEZ-OLGUIN, ESQ.

11 AND

12 JEROME N. FRANK LEGAL SERVICES ORG.
13 YALE LAW SCHOOL
14 Post Office Box 209090
15 New Haven, Connecticut 06520
16 BY: KAREN C. TUMLIN, ESQ.
17 MARISOL ORIHUELA, ESQ.
18 MUNEEER AHMAD, ESQ.

19 For the Plaintiffs NEW YORK STATE OFFICE OF THE
20 State of New York, ATTORNEY GENERAL
21 et al. 28 Liberty Street
22 19th Floor
23 New York, New York 10005
24 BY: MATTHEW B. COLANGELO, ESQ.

25 For the Defendants U.S. DEPARTMENT OF JUSTICE
Baran, et al., and CIVIL DIVISION,
Donald Trump, et FEDERAL PROGRAMS BRANCH
al. 20 Massachusetts Avenue NW
Washington, DC 20530
BY: STEPHEN M. PEZZI, ESQ.

And

U.S. ATTORNEY'S OFFICE
271 Cadman Plaza East
Brooklyn, New York 11201
BY: JOSEPH A. MARUTOLLO, ESQ.

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1 Court Reporter: DAVID R. ROY, RPR
2 225 Cadman Plaza East
3 Brooklyn, New York 11201
4 drroyofcr@gmail.com

5 Proceedings recorded by Stenographic machine shorthand,
6 transcript produced by Computer-Assisted Transcription.

7 P R O C E E D I N G S

8 --oo0oo--
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10 (All participants appearing via videoconference.)

11 THE COURTROOM DEPUTY: All right. These are the
12 civil cases of Vidal versus Trump and the State of New York
13 versus Trump.

14 Starting with the plaintiffs, please state your
15 appearances.

16 MS. JOACHIN: Good afternoon, Your Honor. Mayra
17 Joachin with the National Immigration Law Center on behalf
18 of the Batalla Vidal Plaintiffs.

19 Your Honor, with your permission, before Counsel
20 state their appearances, I would like to introduce the
21 plaintiffs for the motion today.

22 THE COURT: Very well.

23 MR. COLANGELO: Good afternoon, Your Honor. This
24 is Matthew Colangelo for the New York Attorney General's
25 Office for the plaintiffs in 17-CV-5228. And I apologize

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1 for joining by telephone, Your Honor. I was having
2 difficulty with the video link.

3 THE COURT: All right.

4 MR. PEZZI: Good afternoon, Your Honor --

5 MS. ORIHUELA: I would like --

6 MR. PEZZI: Oh, excuse me. I didn't mean to --

7 MS. ORIHUELA: Go ahead, Mr. Pezzi.

8 MR. PEZZI: This is Stephen Pezzi from the
9 Department of Justice on behalf of defendants in both
10 matters.

11 THE COURT: Okay. Good afternoon.

12 All right. And you've got coverage to the
13 parties, and Plaintiffs' Counsel would like to introduce the
14 plaintiffs who are present here --

15 (Pause in proceedings.)

16 THE COURT: All right. Thank you.

17 All right. Plaintiffs' Counsel may introduce the
18 plaintiffs who are listening in on the proceeding.

19 But first let me say before you do so, that this
20 proceeding is moving forward by videoconference and subject
21 to the Rule Number 1.8 of Local Rules of the
22 Eastern District of New York which prohibits the recording
23 in any fashion of this proceeding. Failure to adhere to
24 this rule could result in sanctions.

25 So let's go ahead with the introductions.

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1 MS. JOACHIN: Thank you, Your Honor.

2 Additional Counsel on behalf of Batalla Vidal have
3 yet to enter their appearances, so I will pass it on to the
4 additional Plaintiffs' Counsel.

5 MS. MARTINEZ-OLGUIN: Good afternoon. This is
6 Araceli Martinez-Olguin for the Batalla Vidal Plaintiffs.

7 THE COURT: Good afternoon.

8 MS. TUMLIN: Good afternoon, Your Honor. This is
9 Karen Tumlin for the Jerome N. Frank Civil Services
10 Organization.

11 THE COURT: Good afternoon.

12 MR. AHMAD: Good afternoon, Your Honor. Muneer
13 Ahmad from the Jerome N. Frank Legal Services Organization
14 for the Batalla Vidal Plaintiffs.

15 THE COURT: Good afternoon.

16 MS. ORIHUELA: I'm not sure -- Your Honor, this is
17 Marisol Orihuela also from the Jerome N. Frank Legal
18 Services Organization. I'm not sure if my appearance was
19 noted, but I will do so hopefully now on behalf of the
20 Batalla Vidal Plaintiffs.

21 THE COURT: All right. Well, all that you would
22 need to do is make a written appearance on the record. So
23 if you have not yet done so, it should be -- your appearance
24 if you are members of the Bar of the Eastern District of
25 New York, you can simply enter your appearance. If you're

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1 not, you would be required to appear *pro hac vice* and follow
2 the appropriate procedure for making such an application.

3 All right?

4 Okay. So anyone else that needs to be introduced
5 today?

6 (No audible response.)

7 THE COURT: Ma'am?

8 MS. JOACHIN: Your Honor, I would like to
9 introduce the names of the plaintiffs who are with us today.
10 We have Martin Bataalla Vidal; Eliana Fernandez; Carlos
11 Vargas; Carolina Fung Feng; Antonio Alarcon; and Yaritza
12 Mendez, who is with Make the Road New York who are all
13 accompanying us today.

14 THE COURT: All right. Thank you very much.

15 So at this point, let's move ahead with the issues
16 that we need to attempt to resolve today. I will hear from
17 the plaintiffs' counsel on the first item, and then I will
18 go back to Mr. Pezzi to hear from the Government, and we
19 will try to work things through here so that we can move
20 this case along.

21 MR. COLANGELO: Thank you, Your Honor. This is
22 Matthew Colangelo for the State of New York, and I'll
23 address the first item, which I understand to be whether the
24 plaintiffs should move for partial summary judgment on their
25 Federal Vacancies Reform Act claim or rather as Defendants

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1 propose, Plaintiffs should move for summary judgment on all
2 claims.

3 As Your Honor saw from our -- from the plaintiffs'
4 joint status report, we believe the most efficient and
5 effective way to proceed is for the Court to set an
6 expedited briefing schedule for briefing of a partial
7 summary judgment motion only on the FVRA claims. Those
8 claims, Your Honor, would be dispositive of the entire case.
9 They can be resolved without production of the
10 administrative record or any discovery, and they can be
11 addressed quickly rather than taking time to pursue
12 additional steps and to brief all claims at once.

13 The defendants suggest that briefing partial
14 summary judgment is in some way unusual. Of course, it is
15 not. It is written in the text of Rule 56, the party may
16 move for summary judgment on a particular claim or even on a
17 part of a claim. And here we believe that moving for
18 summary judgment only on the FVRA claims at the outset is
19 the fastest way to potentially resolve this case.

20 THE COURT: All right. Mr. Pezzi.

21 MS. JOACHIN: Well, Your Honor --

22 THE COURT: I'm sorry.

23 MS. JOACHIN: I apologize. If I could just chime
24 in on behalf of the Batalla Vidal Plaintiffs?

25 THE COURT: Go ahead.

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1 MS. JOACHIN: So Plaintiffs are asking this Court
2 to adopt this proposed schedule because we do believe that
3 it is for -- that we could offer to remedy the harms that
4 are being caused to hundreds of thousands of individuals by
5 the Wolf memorandum. Resolution of this claim on
6 Plaintiffs' proposed timeline could void the Wolf
7 memorandum --

8 THE COURT: Hang on.

9 (Pause in proceedings.)

10 THE COURT: All right. Please move a little more
11 slowly. Thank you.

12 MS. JOANCHIN: Thank you for that.

13 Your Honor, resolution of this claim on
14 Plaintiffs' proposed timeline would void the Wolf memorandum
15 allowing thousands of individuals who could be eligible for
16 DACA under the terms of the Wolf DACA Memorandum who have
17 the applications processed or to the risk of deportation and
18 an ability to work.

19 Defendants proposed schedule for summary judgment
20 on all claims is unworkable. It does not allow for
21 Plaintiffs to review the administrative record, resolve any
22 issues concerning its completeness or conduct discovery.
23 This is the key reason why Plaintiffs are offering a way to
24 resolve this.

25 THE COURT: All right.

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1 Mr. Pezzi?

2 MR. PEZZI: Good afternoon, Your Honor. Stephen
3 Pezzi from the Department of Justice on behalf of
4 Defendants.

5 The Government's understanding from the status
6 conference that we had last week was that both the Court and
7 the plaintiffs were interested in an expedited resolution of
8 these cases. And respectfully, the Government's concern
9 with Plaintiffs' proposed schedule is that if the Government
10 prevails on the invalid appointments claim that Plaintiffs
11 want to brief on its own in the beginning of the case, that
12 still leaves the entire remainder of the case to resolve,
13 and at its core, from the Government's perspective,
14 certainly, and I think the same way the supreme court
15 approached it and Your Honor approaches it a few years ago,
16 at its core this is an administrative procedure act
17 challenge to agency action that Plaintiffs believe is
18 unlawful. And so the Government believes deferring
19 briefing, not even setting a schedule on any claims other
20 than this one invalid appointments claim is likely to lead
21 to an inefficient resolution of these matters.

22 The Government does not dispute that the rules
23 provide for filing a motion for partial summary judgment,
24 but under the circumstances here when all the claims raise
25 questions of law, the Government does not see why it

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1 wouldn't be more efficient for both parties on an expedited
2 basis to brief cross-motions for summary judgment that would
3 resolve the entire case, and that is why the Government has
4 proposed the schedule it has proposed.

5 THE COURT: Well, the Court is concerned that
6 there has been a rather extraordinary hurry on the part of
7 the acting secretary to impose the new set of interim steps
8 of the July 28th memorandum, which are now the subject of a
9 question as to his authority to impose those steps, and they
10 weren't -- that was not the result of anything that I asked
11 but was the result, I believe, of a comment from the
12 General Accountability Office, the GAO, as to whether the
13 acting secretary was lawfully entitled to issue such an
14 interim rule, which is what it is, it's an interim rule. I
15 don't care what you want to call it. He basically decided
16 what to do. He did it in a month. He didn't wait on any
17 commentary or -- he didn't request any comment from anyone,
18 he just did it. And now we are faced with a referral by the
19 GAO to the inspector general.

20 I'm just wondering, what was the rush after all
21 this time that's been spent in the courts on the DACA
22 rescission to impose an interim rule, and now we have the
23 question which has been raised by the GAO to the inspector
24 general as to whether this acting secretary is acting
25 lawfully? So I mean, I prefer to do everything at once, but

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1 what we're faced with here is the reality, the reality that
2 we now have an interim set of procedures imposed by someone
3 whose authority to impose such procedures has been
4 questioned by a third party, the GAO, and will be subject to
5 a review and commentary by the inspector general. And for
6 us to go forward with the entire process at this point, you
7 know, it seems that that would be -- that could be an
8 inefficient use of resources. So, you know, I'm in a
9 quandary over this.

10 I know there is a case down in the
11 Southern District of Texas. What is that case about?

12 MR. PEZZI: Your Honor, so there's a long-pending
13 case in the Southern District of Texas brought by the State
14 of Texas and a group of other states that is still pending
15 and that challenges directly the legality of DACA, of DACA
16 itself, and so the Wolf memorandum is not at issue, at least
17 at this time to my knowledge in the Texas proceedings. The
18 claims there are that the continued existence of DACA itself
19 is unlawful.

20 THE COURT: I see.

21 And what is the Government's position in that
22 case, if it has one?

23 MR. PEZZI: So I don't believe there's been a
24 substantive filing from the Government since the supreme
25 court's most recent opinion. I do think the last filing or

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1 filings that the Government made quite some time ago in
2 those cases -- and I have to be a little bit careful because
3 I personally don't represent the Government in those cases.
4 My understanding is that the most recent merits filing from
5 the Department of Justice was that they agreed with the
6 Plaintiff States that DACA conflicted with the INA.
7 Although they disagreed with the Plaintiff States on, for
8 example, propriety of a nationwide injunction and also on
9 their notice and comment claims. But it has been a few
10 years, I believe, since the Government has made a merits
11 filing, and I don't think anyone has made a merits filing
12 since the most recent opinion of the supreme court.

13 THE COURT: All right. Thank you very much. I
14 mean, I'm not holding you to that since you are not counsel
15 in that case, but it gives us a general sense. If anyone
16 agrees with Mr. Pezzi's rendition of the situation down in
17 the Southern District of Texas, please feel free to speak
18 up.

19 But let me ask this: Does anyone know what the
20 current situation is with regard to where that case stands?
21 Is it *sub judice* before the judge or is there to be
22 argument? Has briefing been completed -- I should have done
23 that in the opposite order. But I'm just wondering where we
24 are, you know, down there on that underlying litigation?

25 MR. COLANGELO: Your Honor --

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1 MS. JOANCHIN: Your Honor --

2 MR. COLANGELO: -- Matthew Colangelo for the State
3 of New York, and Mr. Pezzi should feel free to correct me if
4 his understanding is different. But as I understand it,
5 Your Honor, the parties have briefed summary judgment before
6 the supreme court's *Regents* decision; that the parties then
7 submitted proposed schedules for supplementation of their
8 summary judgment papers following the *Regents* decision. As
9 I understand it, the proposed schedules for resolving and
10 personally supplementing those summary judgment papers are
11 still *sub judice*, although the Court did direct the
12 defendants to produce the administrative record by, I
13 believe, next Tuesday.

14 And the only thing I would add, Your Honor, is
15 that in light of the position that the Federal Government
16 took in that litigation, the Court granted the motions to
17 intervene as Defendant Intervenors by several states and
18 other parties to defend the lawfulness of DACA. None of
19 those states have plaintiffs in Your Honor's court today.

20 MR. PEZZI: And this is Stephen Pezzi --

21 MS. JOANCHIN: And Your Honor --

22 MR. PEZZI: -- from the Department of Justice.

23 I more or less agree with Mr. Colangelo's summary.

24 THE COURT: All right. Thank you very much,
25 gentlemen.

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1 Yes, ma'am.

2 MS. JOACHIN: Your Honor, if I may add? Mayra
3 Joachin with the Batalla Vidal Plaintiffs.

4 While Mr. Colangelo is correct that the defendant
5 intervenors in that case have requested supplemental
6 briefing, the Court there has yet to rule on any -- on
7 whether to grant those proposed schedules. My understanding
8 is that one of those proposed schedules would allow for a
9 supplemental briefing to proceed throughout August.
10 However, the alternative proposed schedule would allow
11 for --

12 THE COURT: I'm sorry, but you have to slow down
13 for me now.

14 But what?

15 MS. JOACHIN: The second proposed schedule is --
16 that has been offered is allowing for a sequencing of the
17 briefing on the motion for summary judgment, which would
18 allow for -- first, for briefing on -- with respect to
19 standing, followed by subsequent briefing with respect to
20 the merits of the summary judgment motion, and then followed
21 by briefing on the remedies to be allowed. So that's --
22 those two alternatives provide for Plaintiffs' timeline.
23 And the Court yet has not set a pace in which those -- that
24 potential supplemental briefing could be resolved.

25 THE COURT: Now, Mr. Pezzi, would you agree that

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1 if it were found that Secretary Wolf did not have legal
2 authority to issue his memorandum of July 28th, that it
3 would not be necessary to move forward with the rest of the
4 case which takes issue with that memorandum?

5 MR. PEZZI: Your Honor, obviously we would reserve
6 the right to make whatever, you know, procedural or
7 justiciability arguments that might be appropriate once we
8 see Plaintiffs' complaints, which we haven't yet. But as a
9 general matter, I, of course, agree with the general
10 proposition that if, you know, the author of the memo in
11 question did not have the authority to issue the memo, that
12 would typically result in the *vacatur* of that memo, and so
13 it may be right that Your Honor would not need to address
14 any of the other issues in this case.

15 But again it won't surprise Your Honor to know
16 that the Government respectfully disagrees with the analysis
17 by the Government Accountability Office, and that's a
18 question that Your Honor will have to decide in this case.
19 And so the only question is whether we brief that one
20 question now or whether we brief the entirety of the case.
21 And given the nature of the other claims, as I understand
22 them, I see no reason to wait, and that is why the
23 Government has made the proposal that it has made.

24 THE COURT: I see. Thank you very much.

25 Well, let me just say that it has been the

1 position of the attorney general that injunctive relief
2 granted by a District Court cannot be nationwide in
3 substance. And the attorney general has made that statement
4 publically, privately, generally, specifically, and so it
5 would be surprising if any injunction granted -- if an
6 injunction were granted against the DACA program in the
7 Southern District of Texas with that -- from the point of
8 view of the Justice Department would have any effect and
9 authority in my court and subject litigants in the
10 Eastern District of New York to a bar -- pardon the -- it's
11 not a pun -- to a bar of their claims in this district.

12 That having been said, I do think that it creates
13 an impediment of major proportion to completely brief all
14 the issues in the case on an expedited basis if a condition
15 precedent to the consideration of the Wolf memorandum,
16 meaning the authority of the issue -- issuing authority was
17 not authorized by law.

18 So if we move ahead with just briefing on the
19 legality of the Wolf memorandum, let me hear from Plaintiffs
20 on what they would propose the Court to order at this time.

21 MR. COLANGELO: Thank you, Your Honor. This is
22 Matthew Colangelo for the State of New York.

23 If the Court were to proceed with motions practice
24 for partial summary judgment only on the acting secretary's
25 authority to issue the July 28th memorandum, the plaintiffs

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1 propose that their motions for partial summary judgment be
2 filed on Friday, August 28th; that the defendants have two
3 weeks, to Friday, September 11th to oppose and file any
4 cross-motion; that the plaintiffs have two weeks after that,
5 to Friday, September 25th to reply in support of their
6 motion and to oppose the Federal Government's cross-motion;
7 and that the defendants have one week after that, to Friday,
8 October 2nd to file their reply. Under that schedule,
9 Your Honor, the motions would be fully briefed and under
10 submission by Friday, October 2nd.

11 THE COURT: Why would you need two weeks from the
12 11th to the 25th to file your reply? I think a week would
13 be satisfactory on that, would it not?

14 MR. COLANGELO: Thank you, Your Honor. This is
15 Matthew Colangelo for the State of New York.

16 To be honest, Your Honor, it would depend on any
17 arguments that the Federal Government raised in a
18 cross-motion. Mr. Pezzi --

19 THE COURT: Okay.

20 MR. COLANGELO: -- has not indicated what -- I'm
21 sorry, Your Honor?

22 THE COURT: I understand. No, now I understand.
23 It's the cross-motion issue that might create the crutch, if
24 you will?

25 MR. COLANGELO: Exactly.

1 THE COURT: As a former litigator, I know about
2 crunches, and I'm sensitive to that obviously.

3 Although, you know, somebody once said to me
4 that -- when I became a judge warned me that judges who
5 worked in the litigation world forget what it took to
6 produce a document and made demands that were unreasonable.
7 And so I always ask the question because if I'm going to
8 hurry you up, I want to know what I'm forcing you to do. So
9 that does answer my question.

10 My sense is that the -- the initial question which
11 has been made more focussed by the GAO's statement is a key
12 element of this litigation, and as we move closer to the end
13 of the year, it's appropriate to take it one step at a time,
14 even though I would be -- I just need to resolve the whole
15 issue and send it to the Second Circuit. But whatever I
16 decide on the issue of -- that if we go forward with partial
17 summary judgment, I will recommend that if a party wishes to
18 appeal to the U.S. Court of Appeals, that I would support
19 that effort to appeal.

20 So the whole point here is to make this as
21 efficient as possible and afford this Court the opportunity
22 to deal with the primary, the initial question of whether
23 Acting Secretary Wolf is acting with the authority to issue
24 an interim solution with regard to the operation of DACA.
25 And it's not a small matter. Several of the components of

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1 his order place a significant limit on the rights of current
2 DACA recipients, and if he doesn't have the authority to
3 issue such an order, then we would have to go back to square
4 one and there might have to be a more elongated process
5 before any other orders were issued. But, of course, the
6 administration may decide to find another way to issue this
7 order that would not be subject to question, at least in
8 terms of the authority of the actor, to impose the order --
9 or the memorandum, however you wish.

10 So I'm going to direct that a partial summary
11 judgment on the issue of the acting secretary's authority to
12 issue the Wolf memorandum of July 28, 2020 be -- proceed.
13 The plaintiffs' motion papers are due on August 28th, 2020;
14 and a response and cross-motion by the Government to be
15 filed by September 11th; Plaintiffs' reply and answer to the
16 cross-motion papers by September 25th; and Defendants' reply
17 to the -- and to the Court's motion by October 2nd, and then
18 we will have an oral argument.

19 MR. PEZZI: Yes, Your Honor.

20 MS. JOACHIN: Your Honor --

21 THE COURT: Go ahead -- who is speaking?

22 MS. JOACHIN: This is Mayra Joachin with the
23 Batalla Vidal Plaintiffs.

24 THE COURT: Yes.

25 MS. JOACHIN: I understand that we set the

1 schedule for the briefing on the partial motion for summary
2 judgment, but I do want you to know that the Bataalla Vidal
3 Plaintiffs have also proposed the same schedule for the
4 filing of the motion for class certification, and we ask
5 that we adopt the same deadlines for the filing opposition
6 and the response.

7 THE COURT: Well, were you planning to amendment
8 your complaint?

9 MS. JOACHIN: That is correct. Our amended
10 complaint is -- well, as this Court ordered, is due next
11 Friday, August 28th. And we've got to file the motion for
12 class certification if this Court grants us that on the same
13 day.

14 THE COURT: Yes, the motion's granted.

15 The responding papers -- when would you like for
16 the responding papers, Mr. Pezzi?

17 MR. PEZZI: We would appreciate three weeks for
18 that, Your Honor.

19 And on the class certification, just to be clear,
20 the Bataalla Vidal Plaintiffs moved for class certification
21 during the last round of this litigation and Your Honor
22 didn't even need to decide it. And so given the nature of
23 these proceedings, we have a hard time seeing why a class
24 certification motion would be a rush given the
25 extraordinarily expedited schedule that was just ordered for

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1 the briefing on the very significant legal issue that we
2 have already discussed. So we would ask at least for the
3 time provided by the local rules, and three weeks would be
4 preferable given the nature of the other briefs that we will
5 be filing during that time.

6 THE COURT: Sure. September 18th for your
7 response.

8 MR. PEZZI: Thank you, Your Honor.

9 THE COURT: All right. Thank you very much.

10 And oral argument on the -- we will hold oral
11 argument on Wednesday, October 9th at 3:00 p.m.

12 MR. PEZZI: Your Honor, this is Stephen Pezzi from
13 the Department of Justice.

14 Unless I'm misreading my calendar, I believe
15 October 9th is a Friday.

16 THE COURT: I'm sorry. I'm looking at September.
17 Just one minute.

18 (Pause in proceedings.)

19 THE COURT: October 7th; Wednesday, October 7th at
20 2:00 p.m.

21 Does that work for everybody?

22 MR. COLANGELO: Yes, Your Honor. For the State of
23 New York, that works. Thank you, Your Honor.

24 MS. JOACHIN: Yes, Your Honor, that works for the
25 Batalla Vidal Plaintiffs as well.

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1 I just want to confirm the deadline, the deadline
2 to the reply for the motion for class certification. So
3 under the Government's proposed opposition dated
4 September 18th, that -- our reply would be then be due on
5 October 2nd, which is two weeks after -- after the
6 opposition.

7 THE COURT: That's fine.

8 MS. JOACHIN: Okay.

9 THE COURT: That works.

10 All right. Do we have anything else for today?

11 Mr. Pezzi?

12 MR. PEZZI: Yes, Your Honor. One of the smaller
13 areas of disagreement between the parties was whether or not
14 Plaintiffs were going to file one unified set of briefs or
15 whether alternatively they were going to each file their own
16 briefs making the same legal arguments. From the
17 Government's perspective, that issue has gotten even easier
18 now that Your Honor has adopted Plaintiffs' proposal to
19 focus partial summary judgment briefing only on the valid
20 appointments claim. Plaintiffs have the exact same interest
21 and will presumably be making the exact same arguments.
22 Defendants do not see why it would be efficient for the
23 parties or for the Court to be reading two sets of the same
24 briefs, making the same arguments, or why Defendants should
25 respond to two briefs making the same arguments.

1 In the Northern District of California DACA
2 recission litigation in front of Judge Alsup, for example,
3 there are five groups of Plaintiffs, including another large
4 group of states, and they have no trouble combining to file
5 unified briefs. So we would respectfully request that the
6 two groups of Plaintiffs file one set of combined briefs.
7 If they need extra pages, the Government is more than
8 willing to accommodate that.

9 THE COURT: Mr. Colangelo?

10 MR. COLANGELO: Thank you, Your Honor. This is
11 Matthew Colangelo for the State of New York.

12 We oppose Mr. Pezzi's request, largely because
13 especially with briefs due in less than two weeks,
14 Your Honor, the additional coordination requirement of
15 coordinating not only among the 16 sovereign governments
16 that are Plaintiffs in the State of New York case, but also
17 among all of the Plaintiffs in Batalla Vidal case would be
18 fairly significant.

19 To the extent Mr. Pezzi is concerned about
20 duplicative arguments, it seems that there would be no
21 additional burden on the Federal Government. It could
22 simply have the same response to any arguments that were
23 duplicative.

24 THE COURT: Okay.

25 MS. JOACHIN: And, Your Honor?

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1 THE COURT: Yes, ma'am.

2 MS. JOACHIN: The Batalla Vidal Plaintiffs also
3 oppose that request for the same reasons voiced by
4 Mr. Colangelo; that those briefings have been the process in
5 this litigation, and we see no -- no need to depart from
6 that practice.

7 THE COURT: Okay. I am going to deny the
8 application of the defense, but I am going to ask the
9 plaintiffs to streamline their arguments so that the
10 redundancy is limited as much as possible.

11 I also respect the right of the sovereign to have
12 an independent position from the position of the individual
13 plaintiffs and there are nuances that may be in play that
14 really don't need to be negotiated. Any nuances that are
15 appropriate will be dealt with by the Court, instead of by
16 the various Plaintiffs and the defense.

17 So I appreciate the defenses' position, and I
18 would like everyone to try to streamline or focus their
19 arguments. This is a motion for partial summary judgment
20 which is extremely narrow and focused and a critical one,
21 and so I would appreciate everyone adhering to that basic
22 principle that I just discussed.

23 Is there anything else for today?

24 MR. PEZZI: Understood, Your Honor. This is
25 Stephen Pezzi from the Department of Justice.

1 We had one other small, but important matter to
2 the Government, which is that under the Federal Rules, our
3 obligation to answer the complaint springs to light just 14
4 days after the filing of the amended complaints. Again,
5 given the nature of the partial summary judgment schedule
6 that Your Honor has just ordered, I see no benefit to
7 Plaintiffs or the Court from the Government rushing to
8 prepare two lengthy complicated answers, and so we ask that
9 our papers for a stay of the obligation to file an answer
10 pending further of the Court -- pending further order of the
11 Court. At a minimum in the alternative, we request that
12 obligation be stayed pending the Court's resolution of the
13 parties' motions for summary judgment. And my read of the
14 plaintiffs' letter, although they, of course, should correct
15 me if I'm wrong, is that Plaintiffs did not oppose or do not
16 oppose that alternative request. Their only opposition was
17 to an indefinite stay. So at a minimum, we would ask that
18 our answer deadlines be stayed pending the Court's
19 resolution of the summary judgment motions, which depending
20 on how Your Honor resolves them, might obviate the need to
21 file an answer at all. But certainly they aren't going to
22 be useful to anyone, if ever, until after those motions are
23 resolved.

24 THE COURT: All right.

25 Let me hear from the plaintiffs' counsel. Any

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1 objection to staying the time to answer until further order
2 of the Court, which, of course, you can request at an
3 appropriate time if it's become --

4 MR. COLANGELO: Thank you. Your Honor, this is
5 Matthew --

6 THE COURT: Mr. Colangelo, go ahead.

7 MR. COLANGELO: Thank you, Your Honor. This is
8 Matthew Colangelo for the State of New York.

9 We do not oppose Mr. Pezzi's alternative request,
10 that an answer be filed if necessary 14 days after an order
11 of the Court resolving the forthcoming motion for partial
12 summary judgment. We did oppose request for an indefinite
13 stay but had no opposition to the 14-day request.

14 MS. JOANCHIN: And, Your Honor, the Batalla Vidal
15 Plaintiffs also consent to the defendants' alternative
16 14-day proposal.

17 THE COURT: Very well. The Court grants a stay of
18 the defendants' time to answer the amended complaints until
19 14 days after the decision on the motion for partial summary
20 judgment.

21 Is there anything else, Mr. Pezzi, for today?

22 MR. PEZZI: No, nothing from Defendants,
23 Your Honor.

24 THE COURT: All right. Thank you very much,
25 Mr. Pezzi.

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1 Is there anything from the individual and class
2 plaintiffs?

3 MS. JOACHIN: Your Honor, the other item that was
4 proposed in the schedule was September 18th as the day on
5 which Counsel would meet and confer with regards to the
6 administrative records that have been produced, and we
7 would -- we are proposing that that date also be the
8 deadline in which Counsel can file a joint letter to the
9 Court regarding any further motion practice that might be
10 necessary regarding the completeness of the administrative
11 record.

12 THE COURT: Okay. And so you wish to stay that as
13 well?

14 MS. JOACHIN: We wish to adopt September 18th as
15 the date for that joint letter to the filed.

16 THE COURT: Is there any objection from the
17 defense?

18 MR. PEZZI: We have no objection to filing a
19 status report or separate status reports or letters on
20 September 18th regarding the administrative record.
21 Although I will note given the nature of the schedule that
22 has been adopted, I'm not sure the administrative record
23 will have the same or any significance to the sort of legal
24 arguments we will be briefing on the plaintiffs' claim. But
25 in any event, as our letter reflects, we have no objection

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1 to the September 18th date for a letter -- a joint letter or
2 separate letters if we can't reach agreement about next
3 steps regarding the record.

4 THE COURT: All right. It's so ordered that the
5 parties shall provide such a letter, either jointly or
6 separately by September 18th.

7 So I think we've covered all the entire landscape
8 of this case now. Is there anything else from any of the
9 parties?

10 MR. COLANGELO: Nothing for the State Plaintiffs,
11 Your Honor.

12 THE COURT: Okay.

13 MR. COLANGELO: Thank you.

14 THE COURT: Thank you, sir.

15 All right --

16 MS. JOACHIN: Nothing further for the -- oh, I'm
17 sorry.

18 MR. PEZZI: Nothing from the Government,
19 Your Honor.

20 THE COURT: Okay. Thank you everyone. I
21 appreciate your attention to this matter and the work that
22 you are doing, and we will now await your submissions on the
23 partial motion for summary judgment.

24 Have a good day. Stay safe and well.

25 ALL PARTIES: Thank you, Your Honor.

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(Matter concluded.)

--oo0oo--

*I (we) certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.*

/s/ David R. Roy
DAVID R. ROY

20th Day of August, 2020
Date

David R. Roy, RPA, CSA, CCR
Official Court Reporter